IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8160 of 2007
WITH
SPECIAL CIVIL APPLICATION No.8156 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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| **1** | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| **2** | To be referred to the Reporter or not ? | |
| **3** | Whether their Lordships wish to see the fair copy of the judgment ? | |
| **4** | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | |
| **5** | Whether it is to be circulated to the civil judge ? | |

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SARVODAYA VIKAS MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
**SPECIAL CIVIL APPLICATION No.8160 of 2007**
MS MAMTA R VYAS for Petitioner(s) : 1,
MS ARCHANA RAWAL, AGP for Respondent(s) : 1 – 3.
MRS VD NANAVATI for Respondent(s) : 4,

**SPECIAL CIVIL APPLICATION No.8156 of 2007**
Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
MS BHAVIKA KOTECHA, AGP for Respondent(s) : 1 - 3.
MRS VD NANAVATI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 10/05/2007

COMMON ORAL JUDGMENT
ORDER IN SPECIAL CIVIL APPLICATION No.8160 of 2007

(1) This petition challenges order dated 18.12.2006 made by respondent No.1 authority granting permission to respondent No.4-School to commence and conduct additional class of Std. IX w.e.f. June 2005 as a special case.

(2) Having heard the learned advocates appearing for the respective parties the matter is taken up for final hearing and disposal today. RULE. The learned advocate and the learned Additional Government Pleader appearing for the respective respondents are directed to waive service of rule.

(3) The brief facts necessary for the present are that : the petitioner, a registered trust, is running a school at Village Nava Rajuvadia, Taluka Rajpipla, Dist. Narmada since 1981. Respondent No.4-School moved an application seeking permission to start an additional class for Std. IX w.e.f. June 2005. The said

application was opposed not only by the petitioner but also by one Shree Indrajeet Vidhyalaya. On 17.11.2005 the Commissioner of Midday Meals and Schools, made an order rejecting the application of respondent No.4-School. The said order was carried in appeal by respondent No.4-School, but, vide order dated 31.08.2006 the State Government upheld the order made by the Commissioner and rejected the application by dismissing the appeal. It appears that respondent No.4-School moved the State Government invoking powers under Section 126 of the Grant-in-Aid Code vide letter dated 09.11.2006. The said application came to be granted vide impugned order dated 18.12.2006.

(4) The grievance made on behalf of the petitioner is to the effect that the impugned order does not contain any reasons nor does it reflect that any hearing was granted to the petitioner-Trust despite the petitioner-Trust

having objected to the application of respondent No.4-School right from inception. Inviting attention to affidavit-in-reply dated 23.04.2007 filed in Special Civil Application No.8156 of 2007 (wrongly mentioned as Special Civil Application No.8160 of 2007), it was submitted that the respondent authority has placed reliance on Section 126 of the Grant-in-Aid Code which has been reproduced in Paragraph No.6 of the affidavit-in-reply, however, the said provision specifically stipulates by the Proviso to the Section that no order shall be made by the State Government to the prejudice of any person or institution, unless such person or representative of such institution has been given a reasonable opportunity of showing cause against the order proposed to be made, and that no such opportunity of showing cause has been granted to the petitioner.

(5) The learned Additional Government Pleader appearing on behalf of the respondent

authority has submitted that the objections which had been raised by the petitioner were available on record and before making the impugned order the State Government has considered the said objections. Hence, it can be taken that the provision has been complied with.

(6) The learned advocate appearing for respondent No.4-School states that in so far as compliance with the Proviso to Section 126 of the Grant-in-Aid Code is concerned, respondent No.4-School cannot have any say because the opportunity is required to be granted by the authority before passing the order and respondent No.4 is not in a position to state whether such opportunity had been granted or not. However, according to the learned advocate for respondent No.4, the petitioner-Trust is also running two classes for the same standard and is not likely to be prejudicially affected in any manner whatsoever.

(7) Having heard the learned advocates appearing for the respective parties, including the learned Additional Government Pleader, it is apparent that the impugned order dated 18.12.2006 cannot be sustained as the same has been made in violation of a specific provision, namely, Proviso to Section 126 of the Grant-in-Aid Code, which provision has been resorted to by the authority for making the impugned order. Section 126 of the Grant-in-Aid Code along with Proviso reads as under:

> " Notwithstanding anything contained in this Code, the State Government may call for and examine the record of any order made or decision taken under the provisions of this Code, including those passed or taken in appeal, for the purpose of satisfying itself as to the correctness of propriety of the said order or decision and if, after causing such inquiry to be made as it may deem fit, it appears to it that in any case the said order or decision should be modified, annulled or reversed, the State Government may pass such orders thereof

as it deems fit.

Provided that no such order shall be made by the State Government to the prejudice of any person or institution as the case may be unless such person or representative of such institution has been given a reasonable opportunity of showing cause against the order proposed to be made."

(8) On a plain reading of the aforesaid provision, it becomes apparent that the provision stipulates embargo which can be lifted only when a reasonable opportunity of showing cause against a proposed order is granted to a person, which proposed order is likely to prejudice any person. In the present case, admittedly, the petitioner has been objecting to the application made by respondent No.4-School since inception and based on such objections the authorities have concurrently turned down the request made by respondent No.4-School to start an additional class for Std. IX. Though the principal provision,

namely, Section 126 of the Grant-in-Aid Code opens with a non-obstante clause and permits the State Government to override all the preceding orders made by the authorities, originally or in appeal, yet the said power is not unbridled and the condition placed by the Proviso has to be complied with before the restriction is lifted. There is nothing on record to show that before passing the impugned order the petitioner was given any opportunity of showing cause against order the proposed to be made.

(9) The contention on behalf of the authority that the objections filed earlier in point of time by the petitioner were taken into consideration before passing the impugned order and hence, compliance with the Proviso to Section 126 of the Grant-in-Aid Code can be said to have been satisfied requires to be stated only to be rejected. The language employed by the Proviso is clear and unambiguous. It talks of granting a reasonable

opportunity of showing cause against the order proposed to be made. In other words, before the order is made the concerned person, namely, the affected person, has to be granted an opportunity of showing cause as to why the overriding powers available under Section 126 of the Grant-in-Aid Code should not be used by the State Government. No such opportunity has been granted.

(10) In the circumstances, the impugned order dated 18.12.2006 is hereby quashed and set aside. In the event the State Government intends to exercise powers under Section 126 of the Grant-in-Aid Code, the State Government shall comply with the provisions of the said section, including the Proviso, in letter and spirit, and pass a fresh order, if so deemed fit, after granting a reasonable opportunity to the petitioner as envisaged by the provision. The State Government shall also consider as to whether any retrospective effect as such can be granted when the entire

academic year is over before passing any order.

(11) The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

**ORDER IN SPECIAL CIVIL APPLICATION No.8156 of 2007**

(12) The facts in this petition are similar to the facts of the aforesaid Special Civil Application No.8160 of 2007, except for the fact that the petitioner is a different institution operating from Village Umarava, Taluka Rajpipla, Dist. Narmada and hence, the reasons recorded in the aforesaid judgment in petition being Special Civil Application No.8160 of 2007 and the directions made therein shall mutatis mutandis apply in this case also.

(13) The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no

order as to costs.

(14) Registry to place a copy of this order in connected matter.

Sd/-
[ D.A. MEHTA, J ]

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